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## BEFORE THE ARIZONA CORPORATION CC.....

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IN THE MATTER OF THE APPLICATION OF  
JOHNSON UTILITIES, LLC FOR AN  
INCREASE IN ITS WATER AND  
WASTEWATER RATES FOR CUSTOMERS  
WITHIN PINAL COUNTY, ARIZONA.

Docket No. WS-02987A-08-0180

Arizona Corporation Commission

DOCKETED

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## RUCO'S CLOSING BRIEF

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The Residential Utility Consumer Office ("RUCO") hereby files its Closing Brief in support of the Settlement reached between RUCO and Johnson Utilities ("Johnson" or "Company") in the matter of RUCO and the Company's Application to Rehear Decision No. 72579.

**A) THE SETTLEMENT IS IN THE PUBLIC INTEREST****1) BACKGROUND**

On September 15, 2011, the Commission issued Decision No. 72579, establishing the current rates for Johnson Utilities. R-1 at 3. This Decision amended the rates that had been set for Johnson in Decision No. 71854, issued August 25, 2010. Id. Decision No. 72579 also provided that Johnson could seek an allowance for income taxes generated as a result of its operations if the Commission changed its policy regarding the treatment of income taxes for pass-through entities. Id.

1 On February 21, 2013, in Decision No. 73739, the Commission adopted a policy allowing  
2 Sub-S corporations and other tax-exempt entities, to seek to include in its cost of service an  
3 income tax allowance based on the lower of comparable "C" corporate income tax expense, or  
4 the combined personal income tax obligations created by the distribution of the utility's profits.  
5 Id.

6 On March 8, 2013, the Company filed a petition to amend Decision No. 71854 and  
7 approve the collection of income tax expenses in its rates going forward. Id. On July 16, 2013,  
8 the Commission issued Decision No. 73992 approving Johnson Utilities Petition to Amend  
9 Decision No. 71854, by approving Johnson's request for collection of income tax expense. Id.

10 On July 26, 2013, the Company filed its Application for Rehearing. On July 31, 2013,  
11 RUCO filed its Application for Rehearing. RUCO and the Company negotiated in good faith and  
12 a Settlement ("Settlement" or "Agreement") was reached.

## 13 **2) SETTLEMENT PROVISIONS**

14 RUCO believes that the Agreement is fair to both the consumer and Johnson Utilities and  
15 is in the public interest under the current Commission policy on income taxes. Id. at 4. The  
16 Settlement provides for the following:

17 (1) The Agreement reduces Johnson Utilities recoverable income tax expense from  
18 36.66 percent to a more appropriate level of 25.0 percent.

19 (2) The Agreement requires an independent verification by a Certified Public  
20 Accounting Firm ("CPA") that the weighted average of the income taxes paid by all of the  
21 Company shareholders for year 2007 is at least equal to or greater than 25 percent.

22 (3) The reduction in recoverable income tax expense will save Johnson Utilities  
23 wastewater division ratepayers approximately \$289,000 on an annual basis.

1 (4) The Agreement requires the Company to file yearly earnings reports for years  
2 2013 and 2014.

3 (5) The Agreement will not impair RUCO's right to challenge in future rate case filings  
4 the imputation of income tax expense. Id. at 4 – 5.

### 5 **3) THE SETTLEMENT IS IN THE PUBLIC INTEREST**

6 From RUCO's perspective, the Agreement satisfies the public interest in that it provides  
7 favorable terms and protections for residential consumers under the Commission's current  
8 income tax policy. RUCO disagrees with the Commission's new policy allowing for the  
9 imputation of income tax. RUCO recognizes that the law has made clear that the Commission's  
10 policy is within the Commission's discretion. Given the reality of the situation, this Settlement  
11 makes sense from the ratepayer's perspective.

12 Foremost, the Settlement reduces the tax rate of 36.66 percent that the Commission  
13 approved for recovery under Decision No. 73992. RUCO believed that the income tax expense  
14 recovery was excessive and represented the highest amount of tax expense that would be  
15 recovered under the assumption that Johnson Utilities was taxed the same as a "C"  
16 Corporation. Id. at 6. The reduction in recoverable income tax expense will save Johnson  
17 Utilities wastewater division ratepayers approximately \$289,000 on an annual basis. Id.

18 Another requirement that was important to RUCO is independent confirmation from an  
19 independent CPA firm identifying the actual tax expense paid by the shareholders of Johnson  
20 Utilities. RUCO's intent is to independently verify that ratepayers are not paying any more in  
21 taxes than the actual taxes paid by the shareholders. While neither concession is optimal,  
22 RUCO feels that it is the best that can be done for ratepayers under the Commission's current  
23 policy. Id.

1 The last issue of significance that is settled concerns the filing of the Company's next  
2 rate case. Johnson Utilities did not agree with the requirement that the Company has to file a  
3 full rate case application for both the water and wastewater divisions no later than June 30,  
4 2015, using a 2014 test year. Johnson was requesting a rate case filing no later than June 30,  
5 2016, using a test year of 2015. This agreement provides that the Company will file its next rate  
6 case no later than June 30, 2016, using a test year of 2015. R-2 at 5.

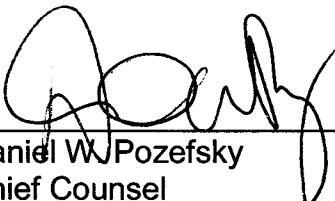
7 RUCO was not particularly concerned about the Company's request. This seems to be  
8 more of an issue for Staff. RUCO believes that the instant annual savings to ratepayers of  
9 \$286,000 was extremely critical in this case and outweighs any potential harm associated with  
10 the later filing. Moreover, RUCO surely is receptive to new rates going into effect later rather  
11 than sooner if those rates are an increase over the current rates. Id.

12 RUCO is opposed to Staff's position that if the Commission is not willing to bifurcate the  
13 issues then the Settlement should be rejected. RUCO thinks this would be a travesty to  
14 Johnson's ratepayers. The Settlement offers a clear bonafide benefit in the annual savings by  
15 the lower rate. To give up this savings in order to move up a rate case that could raise the  
16 ratepayer's rates even sooner is simply absurd and should not be considered.

#### 17 **4) CONCLUSION**

18 The Commission should approve the Settlement Agreement – it is in the public interest.

19 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of April, 2014.  
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22   
23 Daniel W. Pozefsky  
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1 AN ORIGINAL AND THIRTEEN COPIES  
2 of the foregoing filed this 18<sup>th</sup> day  
3 of April, 2013 with:

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